

**FLEIT, KAIN,  
GIBBONS, GUTMAN,  
BONGINI & BIANCO P.L.**  
ATTORNEYS AT LAW

Miami • Fort Lauderdale • Boca Raton

750 Southeast Third Avenue  
Suite 100  
Fort Lauderdale, Florida 33316-1153  
Telephone: (954) 768-9002  
Toll Free: (800) 846-0900  
Facsimile: (954) 768-0158  
[www.FocusOnIP.com](http://www.FocusOnIP.com)

Robert C. Kain, Jr. [rkain@FocusOnIP.com](mailto:rkain@FocusOnIP.com)

VIA FACSIMILE (212) 752-9506 and MAIL

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
Coleman Law Firm  
1350 Broadway, Suite 1212  
New York, NY 10018

Re: Rapaport et al. v. IDEX Online, Ltd. et al.  
Case No. 04-06626(RJH) U.S. District Court, Southern District of New York  
U.S. Patent No. 5,950,178 to Borgato  
Our Ref.: 6874-40

Dear Sirs:

We are special patent counsel for IDEX Online, S.A., one of the defendants in the captioned litigation. As you may know, the Court of Appeals for the Federal Circuit requires an analysis of patent infringement claims and a comparison of those claims to the accused device or system prior to initiating a patent infringement lawsuit. Further, the Federal Circuit has explained in a series of Rule 11 cases that a pre-filing investigation reveal that each element of a patent claim be found in the allegedly infringing device or system before a party asserts a count of patent infringement. Antonious v. Spalding & Evenflo Cos., 275 F.3d 1066, 1072 (Fed.Cir.2002); View Eng'g. Inc. v. Robotic Vision Sys., Inc., 208 F.3d 981, 986 (Fed.Cir.2000); Judin v. United States, 110 F.3d 780, 784 (Fed.Cir.1997).

This letter constitutes notice under Fed.R.Civ.P. 11 that there is no good faith basis for your patent infringement Count Nine and that all Defendants in the captioned action request and demand that Plaintiffs drop and dismiss the patent infringement count within the time frame specified in Rule 11. Otherwise, Defendants will file a Rule 11 motion and reserve their right to seek attorneys fees and costs for defense for this action.

If you disagree with the patent claim analysis set forth below, please advise. Otherwise, we demand that Plaintiffs dismiss the patent infringement action against Defendants.

Ronald D. Coleman, Esq.  
 David Stein, Esq.  
 Lawrence Hersh, Esq.  
 August 29, 2005  
 Page 2

In order to infringe U.S. Patent No. 5,950,178 to Borgato (herein "Borgato '178"), the allegedly infringing system must include a feature or function corresponding to each limitation in at least one independent patent claim in the Borgato '178 patent. "It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." Phillips v. AWH Corp., 392 F.3d 1336 (Fed. Cir. 2005) (en banc). See also, Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc., 381 F.3d 1111, 1115 (Fed. Cir. 2004); Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251 (Fed. Cir. 1989); Laitram Corp. v. Rexnord, Inc., 939 F.2d 1533 (Fed. Cir. 1991). All claim limitations are material. Glaxo Inc. v. Novopharm Ltd., 110 F.3d 1562 (Fed. Cir. 1997). In order to establish infringement, Plaintiffs must show the presence of each element or its substantial equivalent in the accused device or system. Charles Greiner & Co. v. Mari-Med Mfg., Inc., 962 F.3d 1031 (Fed. Cir. 1992).

Patent claim 1 in Borgato '178 recites:

A system for listing and facilitating transactions involving stones categorized by weight and at least one other characteristic relating to the gem comprising: ... (ii) means to compare the price to determine the lowest offer price for a stone offered for the category position and, for said lowest determined offered price, assigning said stone data to a primary offer position in the array category

Claim 1, col. 15, lines 40 - 55.

The Idex system does not have "means to compare the price to determine the lowest offer price for a stone offered for the category position and, for said lowest determined offered price, assigning said stone data to a primary offer position in the array category." At best, the Idex system sometimes stores "offer prices" or bids for stones offered for sale. See (www)idexonline.com. More specifically, the Idex system does not (a) "compare" and does not involve (b) "assigning said stone data to a primary offer position in the array category." The Idex system sometimes stores bid data (if such bid data is input by buyers) but does not compare some bid data with other bid data and does not specially treat, characterize or prioritize some bid data over other bid data for the same stone category.

There is no evidence that the Idex system "compares" nor evidence of "assigning" and these functions are required to establish infringement of claim 1 of the Borgato '178 patent.

Since the Idex system does not "assign" data to "a primary offer position in the array category," the system cannot process that "primary position" data as described in claim 1, column 15, lines 61 - 64.

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 29, 2005  
Page 3

Further, there is no evidence of, and the Idex system does not include, the following aspects recited in claim 1 of the Borgato '178:

said host processor including means to compare a bid with said displayed offer price, (i) if said bid matches the offer price said processor including means to communicate over said link to the identified seller and buyer of the stone that a sale has been made and means for removing said stone data for the sold stone from the data matrix, said comparing means comparing the prices of the remaining stone data of said category to determine the lowest price for the remaining stones and assign the lowest priced remaining stone to the primary position and (ii) if the bid is lower than the displayed offer price said processor including means to store said bid in the array category and compare said bid with other stored bids to determine the highest bid for the category, said determined highest bid assigned to a primary bid position at the array category.

Claim 1, col. 16, lines 11 - 26.

More specifically, the Idex system does not "match bids" and hence does not process data "(i) if said bid matches the offer price said processor including means to communicate over said link to the identified seller and buyer of the stone that a sale has been made." If sales are made based upon some marginal use of the Idex system, such as, for example, via the Idex email function, the Idex system does not "bid match" and does not indicate "that a sale has been made." Further, "sales data" is not stored by the Idex system. Idex sometimes stores bid data with a validity or "bid expiration" date however the primary function of the Idex system is the storage and display of the asking price for stones.

The Idex system does not have "means for removing said stone data for the sold stone from the data matrix." Col. 16, line 15. Once bid data is stored on the Idex system, it stays in the Idex database system until the bid expiration date and then the bid data is deleted. There is no evidence of removal of data from the Idex system.

Further, the Idex system does not log-in or record stone sales data. Inventory data listing stones available for sale and the asking price is continually updated by suppliers. The Idex system does not know if the stones were sold or just removed from inventory. Stone data representing stones having similar characteristics is aggregated using a weighted averaging mathematical formula. See "How Does this work" at [idexonline.com](http://idexonline.com).

The Idex system does not have a step or function of "comparing means comparing the prices of the remaining stone data of said category to determine the lowest price for the remaining stones and assign the lowest priced remaining stone to the primary position" since it has no "primary position" for stone data. Col. 16, line 17.

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 29, 2005  
Page 4

The Idex system does not “match bids” and hence does not process data “(ii) if the bid is lower than the displayed offer price said processor including means to store said bid in the array category and compare said bid with other stored bids to determine the highest bid for the category, said determined highest bid assigned to a primary bid position at the array category.” Col. 16, line 21. The Idex system does not have “a primary bid position” and hence cannot “store” data therein nor determine whether “the bid is lower.”

With respect to the other independent claims in Borgato ‘178, the same analysis applies with respect to the Idex system and the absence of certain features or characteristics.

With respect to claim 10, the Idex system does not have:

(ii) means to compare the price to determine the lowest offer price for a diamond offered for the category position and, for said lowest determined offered price, assigning said data to a primary offer position in the array category

Claim 10, col. 17, line 24.

said processor in response to initiation of communication adapted to issue signals to the terminal to display ... for each category the price from the data assigned to the primary position

Claim 10, col. 17, line 32.

More particularly, the Idex system does not have a “primary position” and hence cannot display “data assigned to the primary position.” Since Idex does not have a “primary position,” the system does not have:

means for the buyer to communicate a bid to the host processor for at least the diamond whose data is assigned to said primary position of the selected category

Claim 10, col. 17, line 50.

As stated earlier, the Idex system does not have:

said host processor including means to compare a bid with said displayed offer price, (i) if said bid matches the offer price said processor including means to communicate over said link to the identified seller and buyer of the diamond that a sale has been made and means for removing said data for the sold diamond from the data matrix, said comparing means adapted to compare the prices of the remaining data of said category to determine the lowest price for the remaining diamonds and assign the lowest priced remaining diamond to the primary position and (ii) if the bid is lower than the displayed offer price said processor including means to store said bid in the array category and compare said bid with other stored bids to determine the highest

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 29, 2005  
Page 5

bid for the category, said determined highest bid assigned to a primary bid position at the array category.

Claim 10, col. 17, line 54.

The Idex system does not have “means to compare,” nor a bid matcher, nor “means to communicate ... that a sale has been made,” nor “means for removing said data for the sold diamond,” nor “comparing means ... to determine the lowest price for the remaining diamonds,” nor a process to “assign the lowest priced remaining diamond to the primary position.” The Idex system does not determine “if the bid is lower than the displayed offer price,” nor “means to store said bid in the array category,” nor a function to “compare said bid with other stored bids to determine the highest bid for the category,” nor a process wherein the “determined highest bid [is] assigned to a primary bid position at the array category.”

With respect to independent claim 16, the Idex system does not involve:

(ii) comparing the price to determine the lowest offer price for a stone offered for the category position and, for said lowest determined offered price, assigning said stone data to a primary offer position in the array category

Claim 16, col. 18, line 38.

The Idex system also does not have a “primary position” and therefore cannot provide a function wherein:

said processor in response to initiation of communication issuing signals to the terminal to display a matrix corresponding to said data matrix array and for each category the price from the stone data assigned to the primary position

Claim 16, col. 18, line 44.

the buyer communicating a bid to the host processor for at least the stone whose data is assigned to said primary position of the selected category

Claim 16, col. 18, line 59.

As indicated earlier, the Idex system does not have many of the recited claim limitations in claim 16 below:

said host processor comparing the bid with said displayed offer price, (i) if said bid matches the offer price said processor confirming over said link to the identified seller and buyer of the stone that a sale has been made and removing said stone data for the sold stone from the data matrix and comparing the prices of the remaining

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 29, 2005  
Page 6

stone data of said category to determine the lowest price for the remaining stones and assign the lowest priced remaining stone to the primary position and (ii) if the bid is lower than the displayed offer price said processor storing said bid in the array category and comparing said bid with other stored bids to determine the highest bid for the category and assigning the highest bid assigned to a primary bid position at the array category.

Claim 16, col. 18, line 62 - col. 19, line 9.

With respect to independent claim 18, the Idex system does not involve:

(ii) comparing the price to determine the lowest offer price for a diamond offered for each category position and, for said lowest determined offered price, assigning said data to a primary offer position in the array category

Claim 18, col. 19, line 24.

The Idex system does not have a "primary offer position" and hence cannot have a:

terminal to display for each sub-subclass a matrix corresponding to said data matrix array and for each category the price from the data assigned to the primary offer position

Claim 18, col. 19, line 33.

The Idex system does not have a "primary position" and cannot have a process for:

the buyer to communicating a bid to the host processor for at least the diamond whose data is assigned to said primary position of the selected category

Claim 18, col. 20, line 11.

As stated earlier, the Idex system does not have many of the elements required in the following portion of claim 18 of the Borgato '178:

said host processor comparing the bid with said displayed offer price, (i) if said bid matches the offer price said processor confirming to the identified seller and buyer of the diamond that a sale has been made and removing said data for the sold diamond from the data matrix and comparing the prices of the remaining data of said category to determine the lowest price for the remaining diamonds and assigning the lowest priced remaining diamond to the primary position and (ii) if the bid is lower than the displayed offer price said processor storing said bid in the array category and

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 29, 2005  
Page 7

comparing said bid with other stored bids to determine the highest bid for the category assigning the highest bid to a primary bid position at the array category Claim 18, col. 20, line 14.

In conclusion, Defendants demand that Plaintiffs withdraw the count of patent infringement within the time specified in Fed.R.Civ.P. 11. Otherwise, Defendants will move for Rule 11 sanctions.

Sincerely,

RCK/cjp



Robert C. Kain, Jr.  
for the Firm

cc: Esther Trakinski (via email)  
client (via email)  
Albe Angel (via email)  
ggraus (via email)

\\Tiger\data share\RCK\CLIENTS\Angel\Rapaport-v-Idex\ldex-Rule-11-ltr-082505-revB.wpd

**FLEIT, KAIN,  
GIBBONS, GUTMAN,  
BONGINI & BIANCO P.L.**  
ATTORNEYS AT LAW

Miami • Fort Lauderdale • Boca Raton

750 Southeast Third Avenue  
Suite 100  
Fort Lauderdale, Florida 33316-1153  
Telephone: (954) 768-9002  
Toll Free: (800) 846-0900  
Facsimile: (954) 768-0158  
www.FocusOnIP.com

Robert C. Kain, Jr. rkain@FocusOnIP.com

August 30, 2005

VIA FACSIMILE (212) 752-9506 and MAIL

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
Coleman Law Firm  
1350 Broadway, Suite 1212  
New York, NY 10018

Re: Rapaport et al. v. IDEX Online, Ltd. et al.  
Case No. 04-06626(RJH) U.S. District Court, Southern District of New York  
U.S. Patent No. 5,950,178 to Borgato  
Our Ref.: 6874-40

Dear Sirs:

We are special patent counsel for IDEX Online, S.A., one of the defendants in the captioned litigation. We have reviewed the Fifth Amended Complaint filed in the captioned action. This letter supplements our earlier letter of August 29, sent to you via facsimile on that date. As you may know, the Court of Appeals for the Federal Circuit requires an analysis of patent infringement claims and a comparison of those claims to the accused device or system prior to initiating a patent infringement lawsuit. Further, the Federal Circuit has explained in a series of Rule 11 cases that a pre-filing investigation reveal that each element of a patent claim be found in the allegedly infringing device or system before a party asserts a count of patent infringement. Antonious v. Spalding & Evenflo Cos., 275 F.3d 1066, 1072 (Fed.Cir.2002); View Eng'g, Inc. v. Robotic Vision Sys., Inc., 208 F.3d 981, 986 (Fed.Cir.2000); Judin v. United States, 110 F.3d 780, 784 (Fed.Cir.1997).

This letter constitutes notice under Fed.R.Civ.P. 11 that there is no good faith basis for your patent infringement Count Nine and that all Defendants in the captioned action request and demand that Plaintiffs drop and dismiss the patent infringement count within the time frame specified in Rule 11. Otherwise, Defendants will file a Rule 11 motion and reserve their right to seek attorneys fees and costs for defense for this action.



Ronald D. Coleman, Esq.  
 David Stein, Esq.  
 Lawrence Hersh, Esq.  
 August 30, 2005  
 Page 2

If you disagree with the patent claim analysis set forth below, please advise. Otherwise, we demand that Plaintiffs dismiss the patent infringement action against Defendants.

In order to infringe U.S. Patent No. 5,950,178 to Borgato (herein "Borgato '178"), the allegedly infringing system must include a feature or function corresponding to each limitation in at least one independent patent claim in the Borgato '178 patent. "It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." Phillips v. AWH Corp., 392 F.3d 1336 (Fed. Cir. 2005) (en banc). See also, Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc., 381 F.3d 1111, 1115 (Fed. Cir. 2004); Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251 (Fed. Cir. 1989); Laitram Corp. v. Rexnord, Inc., 939 F.2d 1533 (Fed. Cir. 1991). All claim limitations are material. Glaxo Inc. v. Novopharm Ltd., 110 F.3d 1562 (Fed. Cir. 1997). In order to establish infringement, Plaintiffs must show the presence of each element or its substantial equivalent in the accused device or system. Charles Greiner & Co. v. Mari-Med Mfg., Inc., 962 F.3d 1031 (Fed. Cir. 1992).

Patent claim 1 in Borgato '178 recites:

A system for listing and facilitating transactions involving stones categorized by weight and at least one other characteristic relating to the gem comprising: ... (ii) means to compare the price to determine the lowest offer price for a stone offered for the category position and, for said lowest determined offered price, assigning said stone data to a primary offer position in the array category

Claim 1, col. 15, lines 40 - 55.

The Idex system does not have "means to compare the price to determine the lowest offer price for a stone offered for the category position and, for said lowest determined offered price, assigning said stone data to a primary offer position in the array category." At best, the Idex system sometimes stores "offer prices" or bids for stones offered for sale. See (www)idexonline.com. More specifically, the Idex system does not (a) "compare" and does not involve (b) "assigning said stone data to a primary offer position in the array category." The Idex system sometimes stores bid data (if such bid data is input by buyers) but does not compare some bid data with other bid data and does not specially treat, characterize or prioritize some bid data over other bid data for the same stone category.

There is no evidence that the Idex system "compares" nor evidence of "assigning" and these functions are required to establish infringement of claim 1 of the Borgato '178 patent.

Since the Idex system does not "assign" data to "a primary offer position in the array category," the system cannot process that "primary position" data as described in claim 1, column 15, lines 61 - 64.

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 30, 2005  
Page 3

Further, there is no evidence of, and the Idex system does not include, the following aspects recited in claim 1 of the Borgato '178:

said host processor including means to compare a bid with said displayed offer price, (i) if said bid matches the offer price said processor including means to communicate over said link to the identified seller and buyer of the stone that a sale has been made and means for removing said stone data for the sold stone from the data matrix, said comparing means comparing the prices of the remaining stone data of said category to determine the lowest price for the remaining stones and assign the lowest priced remaining stone to the primary position and (ii) if the bid is lower than the displayed offer price said processor including means to store said bid in the array category and compare said bid with other stored bids to determine the highest bid for the category, said determined highest bid assigned to a primary bid position at the array category.

Claim 1, col. 16, lines 11 - 26.

More specifically, the Idex system does not "match bids" and hence does not process data "(i) if said bid matches the offer price said processor including means to communicate over said link to the identified seller and buyer of the stone that a sale has been made." If sales are made based upon some marginal use of the Idex system, such as, for example, via the Idex email function, the Idex system does not "bid match" and does not indicate "that a sale has been made." Further, "sales data" is not stored by the Idex system. Idex sometimes stores bid data with a validity or "bid expiration" date however the primary function of the Idex system is the storage and display of the asking price for stones.

The Idex system does not have "means for removing said stone data for the sold stone from the data matrix." Col. 16, line 15. Once bid data is stored on the Idex system, it stays in the Idex database system until the bid expiration date and then the bid data is deleted. There is no evidence of removal of data from the Idex system.

Further, the Idex system does not log-in or record stone sales data. Inventory data listing stones available for sale and the asking price is continually updated by suppliers. The Idex system does not know if the stones were sold or just removed from inventory. Stone data representing stones having similar characteristics is aggregated using a weighted averaging mathematical formula. See "How Does this work" at [idexonline.com](http://idexonline.com).

The Idex system does not have a step or function of "comparing means comparing the prices of the remaining stone data of said category to determine the lowest price for the remaining stones and assign the lowest priced remaining stone to the primary position" since it has no "primary position" for stone data. Col. 16, line 17.

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 30, 2005  
Page 4

The Idex system does not “match bids” and hence does not process data “(ii) if the bid is lower than the displayed offer price said processor including means to store said bid in the array category and compare said bid with other stored bids to determine the highest bid for the category, said determined highest bid assigned to a primary bid position at the array category.” Col. 16, line 21. The Idex system does not have “a primary bid position” and hence cannot “store” data therein nor determine whether “the bid is lower.”

With respect to the other independent claims in Borgato ‘178, the same analysis applies with respect to the Idex system and the absence of certain features or characteristics.

With respect to claim 10, the Idex system does not have:

(ii) means to compare the price to determine the lowest offer price for a diamond offered for the category position and, for said lowest determined offered price, assigning said data to a primary offer position in the array category

Claim 10, col. 17, line 24.

said processor in response to initiation of communication adapted to issue signals to the terminal to display ... for each category the price from the data assigned to the primary position

Claim 10, col. 17, line 32.

More particularly, the Idex system does not have a “primary position” and hence cannot display “data assigned to the primary position.” Since Idex does not have a “primary position,” the system does not have:

means for the buyer to communicate a bid to the host processor for at least the diamond whose data is assigned to said primary position of the selected category

Claim 10, col. 17, line 50.

As stated earlier, the Idex system does not have:

said host processor including means to compare a bid with said displayed offer price, (i) if said bid matches the offer price said processor including means to communicate over said link to the identified seller and buyer of the diamond that a sale has been made and means for removing said data for the sold diamond from the data matrix, said comparing means adapted to compare the prices of the remaining data of said category to determine the lowest price for the remaining diamonds and assign the lowest priced remaining diamond to the primary position and (ii) if the bid is lower than the displayed offer price said processor including means to store said bid in the array category and compare said bid with other stored bids to determine the highest

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 30, 2005  
Page 5

bid for the category, said determined highest bid assigned to a primary bid position at the array category.  
Claim 10, col. 17, line 54.

The Idex system does not have “means to compare,” nor a bid matcher, nor “means to communicate ... that a sale has been made,” nor “means for removing said data for the sold diamond,” nor “comparing means ... to determine the lowest price for the remaining diamonds,” nor a process to “assign the lowest priced remaining diamond to the primary position.” The Idex system does not determine “if the bid is lower than the displayed offer price,” nor “means to store said bid in the array category,” nor a function to “compare said bid with other stored bids to determine the highest bid for the category,” nor a process wherein the “determined highest bid [is] assigned to a primary bid position at the array category.”

With respect to independent claim 16, the Idex system does not involve:

(ii) comparing the price to determine the lowest offer price for a stone offered for the category position and, for said lowest determined offered price, assigning said stone data to a primary offer position in the array category  
Claim 16, col. 18, line 38.

The Idex system also does not have a “primary position” and therefore cannot provide a function wherein:

said processor in response to initiation of communication issuing signals to the terminal to display a matrix corresponding to said data matrix array and for each category the price from the stone data assigned to the primary position  
Claim 16, col. 18, line 44.

the buyer communicating a bid to the host processor for at least the stone whose data is assigned to said primary position of the selected category  
Claim 16, col. 18, line 59.

As indicated earlier, the Idex system does not have many of the recited claim limitations in claim 16 below:

said host processor comparing the bid with said displayed offer price, (i) if said bid matches the offer price said processor confirming over said link to the identified seller and buyer of the stone that a sale has been made and removing said stone data for the sold stone from the data matrix and comparing the prices of the remaining

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 30, 2005  
Page 6

stone data of said category to determine the lowest price for the remaining stones and assign the lowest priced remaining stone to the primary position and (ii) if the bid is lower than the displayed offer price said processor storing said bid in the array category and comparing said bid with other stored bids to determine the highest bid for the category and assigning the highest bid assigned to a primary bid position at the array category.

Claim 16, col. 18, line 62 - col. 19, line 9.

With respect to independent claim 18, the Idex system does not involve:

(ii) comparing the price to determine the lowest offer price for a diamond offered for each category position and, for said lowest determined offered price, assigning said data to a primary offer position in the array category

Claim 18, col. 19, line 24.

The Idex system does not have a "primary offer position" and hence cannot have a:

terminal to display for each sub-subclass a matrix corresponding to said data matrix array and for each category the price from the data assigned to the primary offer position

Claim 18, col. 19, line 33.

The Idex system does not have a "primary position" and cannot have a process for:

the buyer to communicating a bid to the host processor for at least the diamond whose data is assigned to said primary position of the selected category

Claim 18, col. 20, line 11.

As stated earlier, the Idex system does not have many of the elements required in the following portion of claim 18 of the Borgato '178:

said host processor comparing the bid with said displayed offer price, (i) if said bid matches the offer price said processor confirming to the identified seller and buyer of the diamond that a sale has been made and removing said data for the sold diamond from the data matrix and comparing the prices of the remaining data of said category to determine the lowest price for the remaining diamonds and assigning the lowest priced remaining diamond to the primary position and (ii) if the bid is lower than the displayed offer price said processor storing said bid in the array category and

Ronald D. Coleman, Esq.  
David Stein, Esq.  
Lawrence Hersh, Esq.  
August 30, 2005  
Page 7

comparing said bid with other stored bids to determine the highest bid for the category assigning the highest bid to a primary bid position at the array category  
Claim 18, col. 20, line 14.

In conclusion, Defendants demand that Plaintiffs withdraw the count of patent infringement within the time specified in Fed.R.Civ.P. 11. Otherwise, Defendants will move for Rule 11 sanctions.

Sincerely,



Robert C. Kain, Jr.  
for the Firm

RCK/cjp

cc: Esther Trakinski (via email)  
client (via email)  
Albe Angel (via email)  
ggraus (via email)

\\Tiger\data share\RCK\CLIENTS\Angel\Rapaport-v-Idex\ldex-Rule-11-ltr-083005.wpd